

## **ACTION ITEM**

### **Acceptance of Draft Amendment of Delta Plan Revisions for Conveyance, Storage Systems, and the Operation of Both (Water Code §85304)**

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**Summary:** Staff will present and seek Council approval of a draft amendment to the Delta Plan for Conveyance, Storage Systems, and the Operation of Both (CSO amendment) as the proposed project for purposes of analysis in a draft California Environmental Quality Act (CEQA) Program Environmental Impact Report (PEIR) that will be prepared for this and other Delta Plan amendments under consideration by the Council (i.e., proposed amendments regarding the Delta Levees Investment and Risk Reduction Strategy [DLIS] and Performance Measures).

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#### **Requested Action**

Staff requests approval of the revised draft CSO amendment (Attachment 1: *Draft Delta Plan Amendment for Conveyance, Storage Systems, and the Operation of Both, June 2017*) as the proposed project for purposes of analysis in the PEIR for this and other proposed Delta Plan amendments. The Council-approved amendment would be part of the PEIR project description (along with Council-approved project descriptions for DLIS and Performance Measures) and would be analyzed along with a reasonable range of alternatives in the PEIR.

Final Council approval of the CSO amendment, as well as the other proposed Delta Plan amendments, will not be sought from the Council until the environmental review is complete and the PEIR is certified by the Council.

#### **Background**

In accordance with Water Code section 85304, to promote options for improved conveyance in the Delta, the Delta Plan recommended that State and federal agencies complete the Bay Delta Conservation Plan (BDCP) and receive incidental take permits by Dec. 31, 2014. Had that recommendation been fulfilled, the BDCP's conveyance provisions would have been incorporated automatically into the Delta Plan pursuant to Water Code section 85320(a).

In 2015, however, the State announced a new preferred alternative that would not complete the BDCP as a Natural Community Conservation Plan and Habitat Conservation Plan, but instead would pursue conveyance facilities through an initiative called California WaterFix. A parallel effort called California EcoRestore was concurrently proposed to accelerate implementation of a suite of habitat restoration actions in the Delta.

In response to this decision, the Council began to review the issue of conveyance as well as storage and operations per Water Code section 85304:

“The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.”

At its June 25, 2015 meeting, the Council initiated the process for development of an amendment to the Delta Plan to promote options for conveyance, storage systems and the operation of both. Over the ensuing 24 months, several actions were taken.

The first was development of a draft set of guiding principles for the amendment to provide a prompt response to the decision not to pursue the BDCP. This began with discussion of the Delta Plan language and the Council's role regarding conveyance, storage systems, and the operation of both.

The Council held several meetings, which included expert panelists, to inform the development of the principles. At its July 23, 2015 meeting, the Council discussed a draft problem statement to frame development of the principles to inform a CSO amendment. The panelists, consisting of subject matter experts and stakeholders, discussed several topics including:

- History of the State's efforts in developing policies and projects for conveyance, storage systems, and the operation of both;
- New scientific understanding of the system and significant changes in public policies affecting conveyance, storage systems, and the operation of both since the adoption of the Delta Plan;
- Alternatives for conveyance, storage systems, and the operation of both that reflect perspectives of scientists, environmental stakeholders, and water agencies.

At its August 28, 2015 meeting, the Council:

- Adopted a problem statement on the issues of conveyance, storage systems, and the operation of both and their effects on the Delta;
- Considered a revised set of draft principles regarding the status of conveyance, storage systems, and the operation of both; and,
- Heard from water policy experts, who presented on California's water supply challenges.

At the Oct. 22, 2015 meeting, the Council considered a revised set of draft principles and public comments. The Council made suggestions to further refine the draft principles.

At its Nov. 19, 2015 meeting, the Council adopted the *19 Principles for Water Conveyance in the Delta, Storage Systems, and for the Operation of Both to Achieve the Coequal Goals* (19 Principles). The 19 Principles set the direction for development of this draft CSO amendment to the Delta Plan.

Throughout 2016, the Council provided direction about the process for developing a proposed amendment.

At the March 24, 2016 Council meeting, staff presented recommendations for the scope and process for development of a CSO amendment to address conveyance, storage systems, and the operation of both to achieve the coequal goals. The proposed scope included consideration of the types of influence that a proposed amendment might have, and the roles of other agencies.

At its June, 23, 2016 meeting, the Council was briefed on the status of the Delta Plan's recommendations regarding storage and operations; Complete Surface Water Storage Studies (WR R13) and Identify Near-term Opportunities for Storage, Use, and Water Transfer Projects (WR R14). A representative from the Department of Water Resources (DWR) briefed the Council on the status of surface water storage studies, DWR's System Reoperation Program, and results of DWR's System Reoperation Analysis. A representative from the California Water Commission (CWC) informed the Council on the CWC's activities to facilitate grant funds under the Water Storage Investment Program, which could facilitate new water storage projects in the state while providing public benefits to the Delta ecosystem and its tributaries.

At its Sept. 30, 2016 meeting, the Council provided additional guidance for the development of a discussion draft of the proposed CSO amendment.

In 2017, the Council began review and revision of draft amendment language. At the Feb. 23, 2017 Council meeting, Council staff presented the initial discussion draft CSO amendment to the Council. It was also the first opportunity for the public to provide comments on the draft CSO amendment. Additionally, three public workshops were held across the state in March 2017 that provided additional opportunity for public comment. The Council also received public comment letters from various interested parties.

At the March 23, 2017 Council meeting, staff provided an overview of the comments received at the February Council meeting and the March public workshops, and heard additional comments from the public and Council members. Additionally, a public scoping meeting was held on March 24, 2017 to receive comments on the scope of the PEIR for the proposed Delta Plan amendments project that includes the draft Delta Plan CSO amendment and two other proposed amendments to the Delta Plan (DLIS and Performance Measures).

At the April 28, 2017 Council meeting, staff presented a revised discussion draft CSO amendment based upon input from Council members and public comments. Council

staff received additional feedback from the Council and the public during the meeting. Council comments on the discussion draft and staff responses were provided in detail by amendment section and topic in a summary of Council comments.

At the May 25, 2017 Council meeting, staff presented a second revision of the discussion draft CSO amendment based upon input from Council members and the public at the April Council meeting as well as written comments submitted to the Council prior to the May Council meeting. Additionally, the Council heard from two panels. Panel 1, composed of three scientists, examined the science supporting the proposed amendment. Panel 2, composed of various practitioners in Delta issues, examined the effects of the proposed amendment.

### **Today's Briefing**

The purpose of today's briefing is to present a revised version of the CSO amendment (Attachment 1) for Council approval to continue the environmental review effort, with the approved language serving as the proposed project for purposes of analysis in the PEIR.

### Council Member Comments and Responses

During the May Council meeting, staff received input from the Council, panel members and the public. Council member comments on the draft CSO amendment and staff responses are provided in detail in Attachment 3: *Summary of Council Comments on the Delta Plan Amendment for Conveyance, Storage Systems, and the Operation of Both from the May 25, 2017 Delta Stewardship Council Meeting*. Major themes and responses are summarized below. A track changes version of the CSO amendment that includes the following revisions is provided as Attachment 2.

A prominent theme of Council member comments was ensuring that the amendment addressed concerns related to potential impacts to the Delta as a Place from conveyance and storage projects and their operations. The members had comments specifically related to addressing impacts to groundwater supply, water quality, and legacy communities.

Staff made several revisions in response to the discussion including:

- Recommendation I.B.2(i) on page 30<sup>1</sup>, which defines the items that should be considered in detailed project implementation plans for new Delta conveyance, was amended to include a new item, as follows: “(v) Effects on local surface water and groundwater supplies during construction”.
- In the Problem Statement (page 17), legacy communities are referenced in the text, a definition (consistent with that in the Delta Plan) is provided in a footnote,

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<sup>1</sup> Unless otherwise referenced, all page numbers refer to the June 2017 draft Delta Plan CSO amendment Attachment 2 of the June 22, 2017 Council Meeting Agenda Item 5 materials

and Delta Plan recommendation DP R3 (which encourages planning for the vitality and preservation of legacy communities) is referenced.

- Recommendation I.B.2(i) on page 29 was amended to read “Project implementation plans should consider and protect the unique character and historical importance of legacy communities...” and a definition for legacy communities (consistent with the Delta Plan) was provided in a footnote.
- The Recommendation section (beginning on page 24) was amended as follows: “To develop a robust water management system that provides flexibility to adapt to changing conditions, conveyance should be integrated and operated in tandem with enhanced water storage in the Delta watershed and the Delta export area to optimally achieve the coequal goals while protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”
- Recommendation III.B.1(a) (iv) on page 38 was added to read “Avoid or mitigate adverse effects on agriculture in the Delta, including identifying salinity targets suitable for the types of crops grown in the Delta”.
- Recommendation III.B.1(a)(v) on page 38 was added to read “Protection of the quality, reliability, and affordability of water supplies for communities relying on impaired water supplies, including disadvantaged communities, consistent with California Water Code section 106.3”. This same language was added as Recommendation III.D.2(e) on page 41.

In addition to the revisions, it should be noted that the Delta as a Place is described and its importance discussed in numerous locations throughout the Introduction and Problem Statements (see pages 2, 3, 7, and 18). Delta as a Place considerations are also reflected in the recommendations. For example:

- Recommendation I.B.1(j) states that new or improved conveyance projects in the Delta should evaluate “The potential effects of each Delta conveyance alternative on the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”

One Council member also expressed concern that reduced reliance on the Delta and improved regional self-reliance were not addressed through the CSO amendment. The draft language includes numerous references to and provisions for reducing reliance on the Delta (over 22 references) and improving regional self-reliance (10 references). The draft amendment describes the relationship between the CSO amendment and other existing provisions of the Delta Plan, including those related to reducing reliance on the

Delta and regional self-reliance (see pages 5-7). For example, the CSO amendment notes:

- “Further, operational and infrastructure improvements [related to conveyance and storage] need to progress together and in coordination with other actions identified in the Delta Plan, such as those related to restoring and enhancing the Delta ecosystem, improving water quality, achieving greater regional self-reliance and reduced reliance on the Delta, and reducing risks to people and property.” (Page 5.)
- “This draft amendment should be read in tandem with the Delta Plan, including Delta Plan requirements to reduce reliance on the Delta and increase regional self-reliance (see regulatory policy WR P1 and recommendations WR R4 and WR R18), and with the Delta Plan’s guidance regarding more natural, functional flows for the ecosystem (see regulatory policy ER P1, recommendation ER R1, and page 134 of Chapter 4).” (Page 7).

The amendment also notes the role that improvements to conveyance, storage systems, and their operations could play in advancing efforts to reduce reliance on the Delta and improve regional self-reliance.

- Page 9 notes: “Conflicts in the use and timing of water movement through the Delta for multiple purposes could be more easily addressed by improved water conveyance and storage infrastructure with greater capacity and operational flexibility, combined with investments in regional self-reliance as cited throughout the Delta Plan”.
- A section titled “Reduced Reliance on the Delta” (page 13) is included in the Problem Statement.

Recommendations in the amendment also reference reduced reliance on the Delta and improving regional self-reliance:

- Recommendation II.A.2 on page 32 promotes opportunities to store stormwater and recycled water supplies as a strategy for improved regional water management and reduced reliance on the Delta.
- Recommendation II.B.1(b) on page 33 proposes that new or expanded storage projects in the Delta, its watershed, or its export area should contribute to regional self-reliance and reduced reliance on the Delta. A definition of regional self-reliance (consistent with that provided in the Delta Plan) was added as a footnote, for clarity.
- Recommendation II.B.3(a) on page 34 proposes that new storage in the Delta export area should contribute to reduced reliance on the Delta and

regional self-reliance and, particularly during dry periods, through storage of available water supplies during wet periods for use during dry periods.

- Recommendation III.A.4 on page 37 proposes that new or improved conveyance facilities outside of the Delta should reduce reliance on the Delta and promote regional self-reliance.
- Recommendation III.D.2 on page 40 proposes that the State, in allocating funding for new water conveyance and conveyance improvement projects outside the Delta that support regional self-reliance, give preference to projects with various characteristics, including reducing reliance on the Delta (specified under item (a)).

Proposed performance measures related to the CSO amendment also address reduced reliance on the Delta and improving regional self-reliance. For example, see Agenda Item 10, Attachment 1, PM 3.4.

To further convey that the CSO amendment recommendations are to be interpreted in connection with the other provisions of the Delta Plan (such as reduced reliance on the Delta and improved regional self-reliance), language was added to the Recommendations (formerly the “Conclusion”) statement that the CSO amendment contains “a suite of actions to be collectively pursued in an integrated manner, alongside existing Delta Plan policies and recommendations.” (Page 25)

Lastly there was concern that the amendment emphasizes dual conveyance over other options, including options related to storage and operations. The draft amendment describes conveyance, storage systems, and the operation of both as part of a “broad and integrated portfolio of actions described in the Delta Plan” (see page 4). The amendment was modified in two locations to further emphasize this point and that the recommendations are to be collectively pursued:

- The Introduction (page 7) was amended to include, “The Delta Plan includes a portfolio of strategies to achieve the coequal goals, and this amendment adds to this portfolio by promoting improvements to water conveyance, storage systems, and the operation of both.”
- The Recommendations section (beginning on page 24) was amended to read, “To develop a robust water management system that provides flexibility to adapt to changing conditions, conveyance should be integrated and operated in tandem with enhanced water storage in the Delta watershed and the Delta export area to optimally achieve the coequal goals while protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Sections I, II, and III contain a suite of actions to be

collectively pursued in an integrated manner, alongside existing Delta Plan policies and recommendations.”

Conveyance recommendations (Section I) are listed first in the amendment not because they are the primary recommendations or the central focus of the CSO amendment, but because this order is consistent with the language of the Delta Reform Act. (See Water Code section 85304.) The recommendations portion of the CSO amendment contains roughly equal text dedicated to promoting options for conveyance, storage systems, and the operation of both. About six pages of the recommendations relate to conveyance, five pages relate to storage systems, and six pages relate to the operation of both, reflecting a balance among the three components.

#### Other Amendment Revisions

In addition to the revisions detailed above in response to Council member comments, revisions were made throughout the document in response to comments from the May 25, 2017 Council meeting panels, State agencies, non-governmental organizations and the public. This includes revisions related to adaptive management and monitoring (page 23), drought water operation strategy (page 36), and environmental justice concerns (pages 12, 35, 38, and 41).

On April 17, 2017, Restore the Delta and the Environmental Justice Coalition for Water (“Restore the Delta”) submitted scoping comments in response to the Notice of Preparation for the Delta Plan Amendments PEIR. In addition, at the April 28, 2017 Council meeting, a representative of the City of Stockton testified briefly about these same issues. These comments cited several provisions of State and federal law, which are discussed in Attachment 4: *Response to environmental justice comments on the Notice of Preparation for the Delta Plan Amendments Program Environmental Impact Report*.

Additionally, the May version of the draft CSO amendment included an Attachment A. *Timeline of Major Conveyance, Storage, and Operations*, and B. *Performance Measures Relevant to Delta Plan Amendments for Conveyance, System Storage, and the Operation of Both*. Attachment A was removed from the June version draft CSO amendment because, although relevant to background context, it was not pertinent to the draft language. The timeline is included to this staff report (Attachment 5) and reflects the inclusion of the North Bay Aqueduct (phases 1 and 2) into the timeline. Attachment B was removed from the June draft CSO amendment because the relevant performance measures to the draft CSO amendment are part of another Delta Plan amendment effort (See Agenda Item 10 of June 22, 2017 Council meeting) which packages all of the latest draft performance measures for Council review and approval.

#### **Next Steps**

If the Council approves the draft CSO amendment (Attachment 1) as the proposed project to be analyzed in the PEIR, it will be included as part of the Project Description in the Delta Plan Amendments PEIR.

The purpose of an environmental impact report (EIR) is to identify the significant effects on the physical environment (impacts) of a proposed project, such as the Delta Plan Amendments, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided<sup>2</sup>. A “Program EIR” is used for a series of actions that can be characterized as one large project, such as actions in connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program<sup>3</sup>. The EIR must describe the actions that constitute the proposed project, describe the environmental setting (physical environmental conditions) in the vicinity of the project as well as the regional setting; identify the significant effects on the physical environment of the proposed project, including cumulative impact of the project together with other projects causing related impacts; describe feasible mitigation measures to minimize significant adverse impacts; and evaluate a reasonable range of alternatives to the proposed project to avoid or substantially lessen any significant effect of the project<sup>4</sup>, CEQA includes opportunities for public review, comment and input throughout the process.

The following is a summary of the next steps in the environmental review process for the draft CSO amendment and other Delta Plan amendments (DLIS and Performance measures). These steps are also illustrated in Attachment 6: *CEQA Process Summary for Delta Plan Amendments*.

1. The proposed Delta Plan CSO amendment will be included in the description of the proposed project that is analyzed in the Draft PEIR, which will be prepared for *all* of the proposed Delta Plan amendments (DLIS, CSO, and Performance Measures).
2. The Draft PEIR will be released for public review and comment, and a public hearing for the Council to receive comments on the Draft PEIR will be held during the comment period.
3. Following the close of the public review period on the Draft PEIR, staff and consultants will prepare responses to comments, which will be included along with any text revisions in a “responses to comments” document. Together, the Draft PEIR and the responses to comments document will constitute the Final PEIR.
4. The Final PEIR will be presented to the Council for certification. Following certification of the PEIR, the Council will then consider adoption of the proposed Delta Plan amendments, including the Delta Plan amendment for Conveyance, Storage Systems, and the Operation of Both.

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<sup>2</sup> Pub. Resources Code section 21002.1

<sup>3</sup> CEQA Guidelines section 15168(a)(1)-(4)

<sup>4</sup> CEQA Guidelines sections 15124, 15125, 15126.2, 15126.4, 15126.6, 15130.

Throughout the process, staff will continue to provide regular updates to the Council, stakeholders and the public.

**Fiscal Information**

Not applicable.

**List of Attachments**

- Attachment 1: Draft Delta Plan Amendment for Conveyance, Storage Systems, and the Operation of Both, June 2017
- Attachment 2: Draft Delta Plan Amendment for Conveyance, Storage Systems, and the Operation of Both, June 2017 (showing track changes)
- Attachment 3: Summary of Council Comments on the Delta Plan Amendment for Conveyance, Storage Systems, and the Operation of Both from the May 25, 2017 Delta Stewardship Council Meeting
- Attachment 4: Issues raised in environmental justice comments on the Notice of Preparation for the Delta Plan Amendments Program Environmental Impact Report.
- Attachment 5: Timeline of Major Conveyance, Storage, and Operations
- Attachment 6: CEQA Process Summary for Delta Plan Amendments

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